XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(31)

मामला क्रमांक CrA No 923 सन् 2003

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT:
(IN JAIL)

Nakchheda, aged 27 years
S/o. Guha Singh Thakur
R/o Bazarpara Kodagaon,
P.S. & Tahsil Kodagaon,
District Bastar (C.G.)

Versus

RESPONDENT:

The State of Chhattisgarh,
Through P.S. Kodagaon, District
Bastar (C.G.)

Present:

Smt. Uma Tiwari, counsel for the appellant.

Shri D.K. Gwalre, Additional Public Prosecutor for the State/respondent.

**Division Bench: - Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Dhirendra Mishra, JJ.**

ORAL JUDGMENT
(Delivered on 9-4-2007)

L.C. Bhadoo, J.

Today this appeal is listed on I.A. No.01 for suspension of sentence and grant of bail.

With the consent of learned counsel for the parties, this appeal is being disposed of by this judgment, as the accused is in detention for about 5 years.

This appeal is directed against the judgment of conviction and order of sentence dated 15th November, 2002 passed by the Special Judge, S.C./S.T. Act, Bastar at Jagdalpur, in S.T. No. 272/2002 whereby learned

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Special Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default of payment of fine to further undergo R.I. for one year.

The case of the prosecution, in brief, is that Roop Singh gave a merg intimation Ex.-P/1 in the Police Station Kondagaon with the allegations that on 18/4/2002 he was going to Bazarpara. He saw that Gulabgiri was lying, blood was oozing from his head. There was injury on the left temporal region. Based on that, First Information Report Ex.-P/2 was registered. Thereafter, sub inspector Arvind Dwivedi left for scene of occurrence, after giving notice Ex.-P/9 to the Panchas, he prepared inquest Ex.-P/13 on the body of deceased Gulabgiri. The body of deceased Gulabgiri was sent for postmortem examination to the Primary Health Centre, Kondagaon where Dr. Santosh Lonhare (PW-8) conducted post-mortem and prepared postmortem report Ex.-P/10-A. The Investigating Officer seized plain soil and blood stained soil under Ex.-P/4 from the place of occurrence. While in the police custody, the accused gave memorandum Ex.-P/6, in pursuance of that, he got recovered club under Ex.-P/7.

After completion of the investigation, charge sheet was filed against the present accused/appellant and co-accused Aloysius @ Joseph for the commission of offence under Section 302 read with Section 34 of the I.P.C. in the Court of Judicial Magistrate, 1st Class, Kondagaon, who in turn committed the case to the Sessions Judge, Jagdalpur from where learned Special Judge received the case on transfer for trial.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The prosecution examined 8 witnesses at the trial. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied material appearing against them in the prosecution evidence. They stated that they are innocent and have been falsely implicated in the crime.

Learned Special Judge vide impugned judgment convicted and sentenced the present accused/appellant as aforementioned whereas, acquitted co-accused Aloysius @ Joseph.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellant has not disputed homicidal death of deceased Gulabgiri. Moreover, PW-8 Dr. Santosh Lonhare has stated that he conducted postmortem on the body of deceased Gulabgiri. There was one injury on the temporal region. There was intradural haemorrhage. In view of the above, it is established that the death of deceased Gulabgiri was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, PW-3 Smt. Pratima has stated that on the day when Gulabgiri died the accused came to her and said that he has committed the murder of Gulabgiri. She has further stated that on that day the accused was in a drunken condition. Beyond that nothing has been brought in cross-examination in order to discredit the evidence of this witness. Even club, weapon of offence, was recovered at the instance of the accused. Looking to the evidence of PW-3 Smt. Pratima, we are of the considered opinion that the accused made extra judicial confession before this witness voluntarily. In view of the evidence of this witness and

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

based on recovery of club, involvement of the accused in the crime in question is established.

Learned counsel for the accused/appellant argued that looking to the facts and evidence available on record, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused the evidence. PW-8 Dr. Santosh Lonhare, who conducted postmortem, has stated that there was lacerated wound on the skull in the size of 7 cm x 3 cm x 3 cm. There was intradural haemorrhage. Death was on account of rupture of the artery. As per the facts of the case, the deceased and the accused were in the habit of consuming liquor. The deceased was beggar and he was addicted to the liquor. The prosecution has not been able to bring on record that the accused had any animosity or he attacked the deceased after preparation or pre-meditation. Looking to the facts that the accused appears to have assaulted the deceased only once, all of a sudden, in a heat of passion, when some hot words were exchanged between the two, the doctor has not stated that injury which was on the head of the deceased was sufficient in the ordinary course of nature to cause death, in view of the above circumstances, intention to cause death cannot be attributed to the accused/appellant. However, from the facts, it emerges that while attacking on the head, vital organ, the accused had knowledge that he may likely to cause death, therefore, we are of the

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आदेश पत्रक (पूर्वानुबद्ध)

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	considered opinion that offence against the accused/appellant does not travel beyond Section 304 Part-II of the I.P.C. In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. are set aside, instead thereof, he is convicted under Section 304 Part-II of the I.P.C. It is stated that the accused is in detention since 19-4-2002 thereby he is in detention for about 5 years, therefore, the accused is sentenced to the sentence already undergone by him. The accused be set at liberty forthwith, if not required in any other case. Sd/- L.C.BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge
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